IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

APPEAL FROM ORDER NO.450 OF 2005
IN
NOTICE OF MOTION NO.833 OF 2005
IN
L.C.SUIT NO.1138 OF 2005

1. Shri Payanat Kutty Ali Appellants
vs.
1.The State of Maharashtra & ors. Respondents

Mr.C.K.Tripathi for the appellants.

CORAM : B.H. MARLAPALLE,J.

DATED : 6th September 2005

P.C.

Heard the learned counsel for the appellant-plaintiff.

2. L.C.Suit No.1138/05 has been filed for mandatory injunction and the prayer for ad-interim injunction was given up. The plaintiff had prayed for appointment of Court Commissioner and the learned Judge of the City Civil Court at Mumbai noted that having regard to the averments made in the plaint and the documents annexed thereto, the prayer for appointment of Court Commissioner could not be entertained.

3. Admittedly, the suit structure is partly demolished and the plaintiff has prayed for re-construction of suit

structure in the pending suit. Under these circumstances, the prayer for appointment of Court Commissioner has been rightly rejected.

4. The appeal is, therefore, dismissed in limine.

5. Civil Application does not survive.

6. However, this order will not come in the way of the appellant for applying afresh during the trial of the Suit, if so advised for appointment of a Court Commissioner.

(B.H. MARLAPALLE,J.)